

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

DANNY WILLIAMS

PLAINTIFF

VS.

CIVIL NO. 1:95CV286-JAD

RELIANCE STANDARD LIFE INSURANCE COMPANY

DEFENDANT

MEMORANDUM OPINION

In this lawsuit Plaintiff seeks waiver of the premiums for his policy with Defendants due to his total disability. Defendant has moved for summary judgment claiming the plaintiff failed to notify the company of his disability within the one-year period required by the policy, barring him from recovery in this case.

On August 6, 1992, Plaintiff had a heart attack at the age of 43. Believing himself to be totally disabled, Williams filed for Social Security Disability benefits December 1, 1992. On October 1, 1993, the Administrative Law Judge for the Social Security Administration found the plaintiff totally disabled from August 6, 1992, and entitled to benefits. Plaintiff did not notify the defendant of his disability until June 6, 1994.

The policy language regarding application for waiver of benefits is:

WAIVER OF PREMIUM IN EVENT OF TOTAL DISABILITY

We will extend the Amount of Insurance during a period of Total Disability for 1 year if:

- (1) the employee becomes Totally Disabled prior to age 60;
- (2) the Total Disability lasts for at least 6 months in a row;
- (3) we receive proof of Total Disability within 1 year from the date it began; and
- (4) the premium continues to be paid during the 6 month period.

"Total Disability/Totally Disabled" means: an employee's complete inability to engage in any type of work for wage or profit for which such employee is suited by education, training or experience.

After proof of Total Disability is approved by us, premium payment for the Insured and his insured Dependents (if applicable) is not required for 1 year.

A copy of policy provisions regarding waiver of premiums is attached hereto as "Exhibit A."

Plaintiff obviously believed himself to be totally disabled at the time he applied for Social Security benefits. He did not, however, simultaneously notify the defendant insurer of his belief or offer any proof to the defendant to support that belief as he did to the Social Security Administration.

Plaintiff's argument that he did not know he was disabled until so informed by the Social Security Administration is specious. The determination of disability by the insurer is entirely separate and apart from such a determination by any other body. A finding of total disability by the Social Security Administration does not bind the insurer to the same conclusion, and the plaintiff has offered the court no law to show that it must. The employee can be compelled to submit to examination by defendant's choice of physicians and must annually show proof of continuing disability. Nowhere in the policy provisions regarding waiver of benefits does the insurer relinquish its independent judgment on this ultimate issue.

However harsh the result may appear, it is clear that this plaintiff did not timely fulfill the contractual provisions and is, therefore, barred from recovery. Summary judgment will be **granted** for the defendant. A separate judgment will be entered.

This _____ day of May, 1996.

UNITED STATES MAGISTRATE JUDGE